

Application No. 10/605,408
Docket No. YOR920000707US2
Amendment dated December 13, 2006
Reply to Office Action of June 13, 2006

REMARKS

In Office Action, the Examiner rejected all of the pending claims under 35 USC §102(e) as being anticipated by U.S. Patent Application Publication No. 2006/0014366 to Currie, and withdrew claim rejections under 35 USC §102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0003599 to Yeo et al. (Yeo) and U.S. Patent Application Publication No. 2004/0142541 to Cohen et al. (Cohen) and under 35 USC §103 as being unpatentable over Yeo in view of U.S. Patent No. 6,391,695 to Yu.

In response, aside from using the term "region" instead of "layer" for the insulating layers 14, 14a, and 14b, Applicant has amended the claims so as to have the same scope as pending prior to Applicant's amendment filed February 8, 2006, and submits herewith two Declarations under 37 CFR 1.131, by which Applicant Ken (Kern) Rim and the Applicant's associate, Kevin C. Chan, present statements and lab records that show the claimed invention was actually reduced to practice before the reference dates of Curie, Yeo, Cohen, and Yu.

In doing so, Applicant notes that, in reviewing Applicant's previous declaration submitted April 21, 2006, the Examiner stated:

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The evidence submitted is insufficient to establish either conception or due diligence prior to the critical date.

...
In addition, even assuming that conception has been established applicant has made no reference toward diligence that is needed to establish priority.

Office Action, Page 2 (3rd paragraph) and page 3 (1st full paragraph).

However, Applicant is not required to establish conception or diligence under the present circumstances, because Applicant is establishing actual reduction to practice (see MPEP 715.07 III(A)), and not constructive reduction to practice (see MPEP 715.07 III(B) or (C)). Diligence is only relevant if "conception occurs prior to the date of the reference, but reduction to practice is afterward." MPEP 715.07(a). The attached declarations by Applicant Rim and Mr. Chan aver that the invention was actually reduced to practice prior to the earliest date of the references of record.

As explained under MPEP 715.07 III,

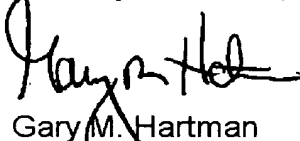
proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose.

Applicant respectfully believes that the attached declarations establish that Applicant's process was actually carried out and worked for its intended purpose before the reference dates of the Curie, Yeo, Cohen, and Yu.

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Should the Examiner have any questions with respect to any matter
now of record, Applicant's representative may be reached at (219) 462-4999.

Respectfully submitted,

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Attachments: Declarations of Ken Rim and Kevin Chan